

## STATEMENT OF FACTS

On January 6, 2021, your affiant, Timothy J. Ervin, was on duty and performing my official duties as a Special Agent with the Federal Bureau of Investigation (“FBI”). As a Special Agent, I am authorized by law or by a Government agency to engage in or supervise the prevention, detention, investigation, or prosecution of violations of Federal criminal laws.

The U.S. Capitol is secured 24 hours a day by U.S. Capitol Police. Restrictions around the U.S. Capitol include permanent and temporary security barriers and posts manned by U.S. Capitol Police. Only authorized people with appropriate identification were allowed access inside the U.S. Capitol. On January 6, 2021, the exterior plaza of the U.S. Capitol was also closed to members of the public.

On January 6, 2021, a joint session of the United States Congress convened at the United States Capitol, which is located at First Street, SE, in Washington, D.C. During the joint session, elected members of the United States House of Representatives and the United States Senate were meeting in separate chambers of the United States Capitol to certify the vote count of the Electoral College of the 2020 Presidential Election, which had taken place on November 3, 2020. The joint session began at approximately 1:00 p.m. Shortly thereafter, by approximately 1:30 p.m., the House and Senate adjourned to separate chambers to resolve a particular objection. Vice President Mike Pence was present and presiding, first in the joint session, and then in the Senate chamber.

As the proceedings continued in both the House and the Senate, and with Vice President Mike Pence present and presiding over the Senate, a large crowd gathered outside the U.S. Capitol. As noted above, temporary and permanent barricades were in place around the exterior of the U.S. Capitol building, and U.S. Capitol Police were present and attempting to keep the crowd away from the Capitol building and the proceedings underway inside.

At such time, the certification proceedings were still underway and the exterior doors and windows of the U.S. Capitol were locked or otherwise secured. Members of the U.S. Capitol Police attempted to maintain order and keep the crowd from entering the Capitol; however, shortly around 2:00 p.m., individuals in the crowd forced entry into the U.S. Capitol, including by breaking windows and by assaulting members of the U.S. Capitol Police, as others in the crowd encouraged and assisted those acts.

Shortly thereafter, at approximately 2:20 p.m. members of the United States House of Representatives and United States Senate, including the President of the Senate, Vice President Mike Pence, were instructed to—and did—evacuate the chambers. Accordingly, the joint session of the United States Congress was effectively suspended until shortly after 8:00 p.m. Vice President Pence remained in the United States Capitol from the time he was evacuated from the Senate Chamber until the sessions resumed.

During national news coverage of the aforementioned events, video footage which appeared to be captured on mobile devices of persons present on the scene depicted evidence of violations of local and federal law, including scores of individuals inside the U.S. Capitol building without authority to be there.

On January 9, 2021, the FBI received an anonymous tip that JOSE PADILLA, later fully identified as JOSEPH LINO PADILLA (herein referred to as “PADILLA”), made posts on his Facebook page and a web-site known as [thedonald.win](https://thedonald.win) under a specific username, in which he admitted to taking part in the riots at the U.S. Capitol. Subsequent investigation, described below, confirmed PADILLA was the user of both the Facebook page and the username on “thedonald.win” that were identified by the tipster. Your affiant reviewed a Tennessee driver’s license photo issued to PADILLA and compared it to the Facebook page identified by the anonymous tipster and the two photographs appear to be the same individual.

On January 11, 2021, another tipster, who will be referred to herein as “W1,” contacted the FBI to report that s/he knows PADILLA. W1 was able to recognize PADILLA in videos shown on television from the Capitol rioting. According to W1, another individual, herein referred to as W2, is also familiar with PADILLA and has had multiple in person interactions with PADILLA. W2 identified PADILLA through videos circulating online and prompted W1 to find videos online of PADILLA in an altercation with a police officer at a guard rail and another video in which PADILLA is seen throwing a pole. W1 stated that according to individuals who still remain in contact with PADILLA, PADILLA has recently been immersed in the alt-right and had a “Q-Anon mentality.”

W1 provided the photograph below, which was posted on PADILLA’s Facebook page on March 4, 2012. W1 indicated PADILLA was wearing the same jacket at the Capitol on January 6, 2021.



Based on information provided by W1, and subsequent FBI review, the following videos were located which capture evidence of PADILLA taking part in the January 6, 2021 riots at the U.S. Capitol:

1. The body worn camera (BWC) footage from January 6<sup>th</sup> of a Metropolitan Police Department (MPD) Officer.

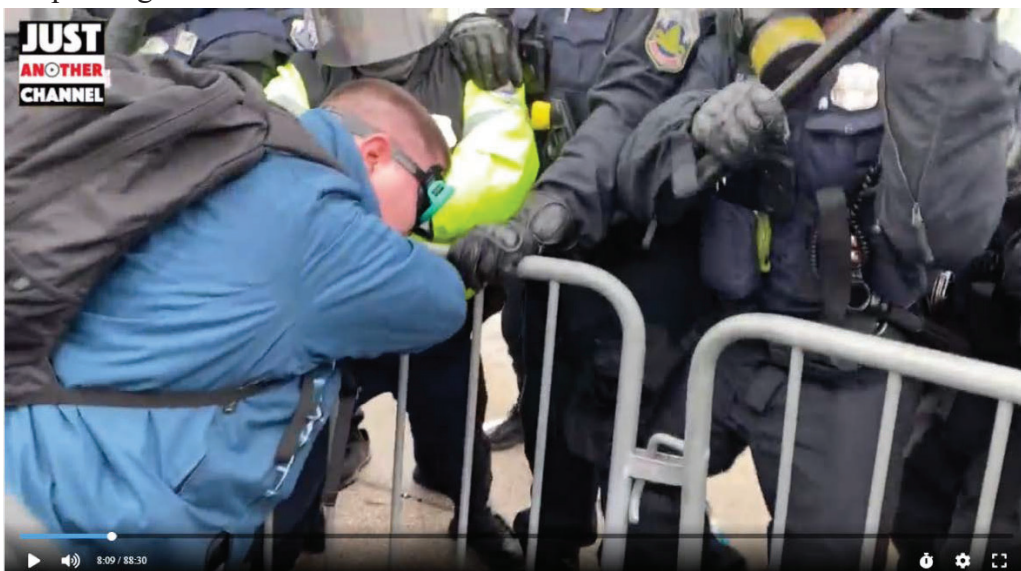
2. An online posting of a video from “Just Another Channel”, which carries the title “Watch: What Really Happened at the Capitol Door?”
3. Another online posting of a video from “jrobertson.nyc.”

The screen shots below are taken from the above listed videos.

MPD BWC: At approximately 1:31 pm, PADILLA approaches the barricade line and is eventually pushed away by an MPD officer. In the below and later images, it is clear PADILLA is wearing the same dark blue jacket worn by him in his 2012 Facebook photo. In the below photograph, PADILLA is also wearing a scuba mask over his eyes and a black backpack on his back:



The MPD BWC captured PADILLA pushing the barricade in front of him and shouting, “Push! Push! Fucking push!” As depicted below, the Just Another Channel video shows PADILLA pushing the fence in front of officers:

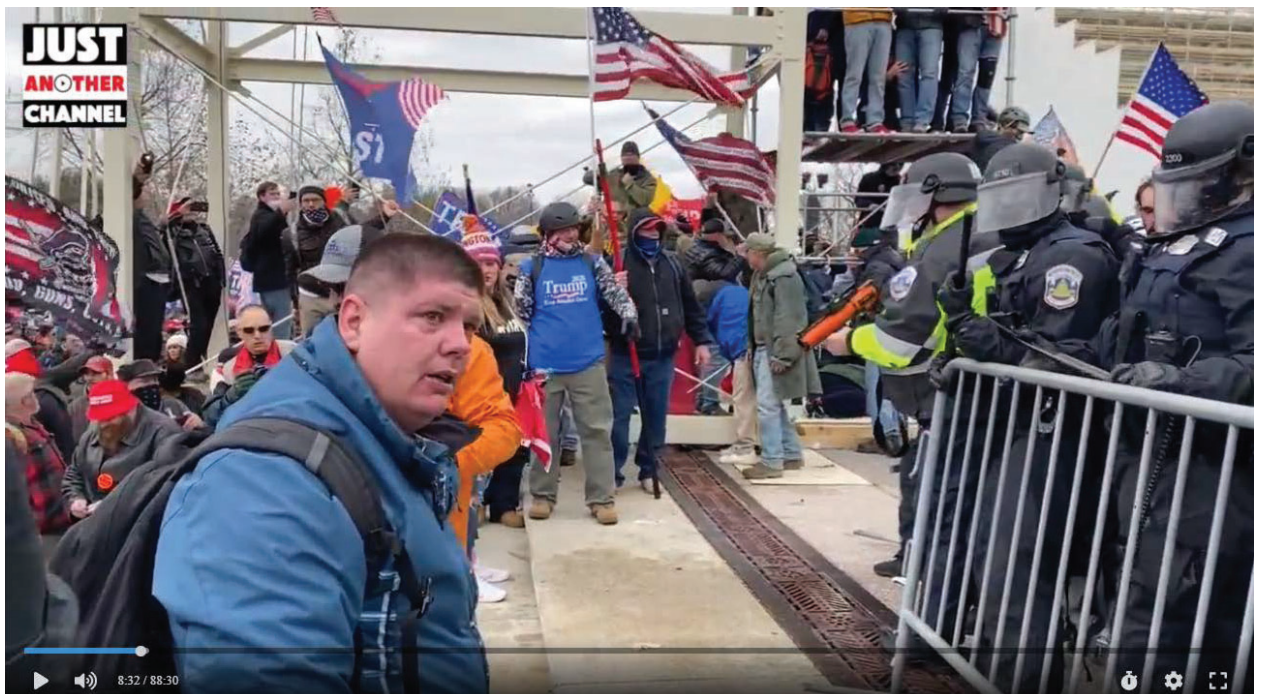




MPD BWC: At 1:38 pm, after PADILLA begins pushing the barricade, MPD officers remove his SCUBA mask and begin shoving him and deploying baton strikes to get him to stop:



Just Another Channel: Subsequent to MPD Officers removing PADILAA's scuba mask and deploying baton strikes, PADILLA backs away from the barricade:

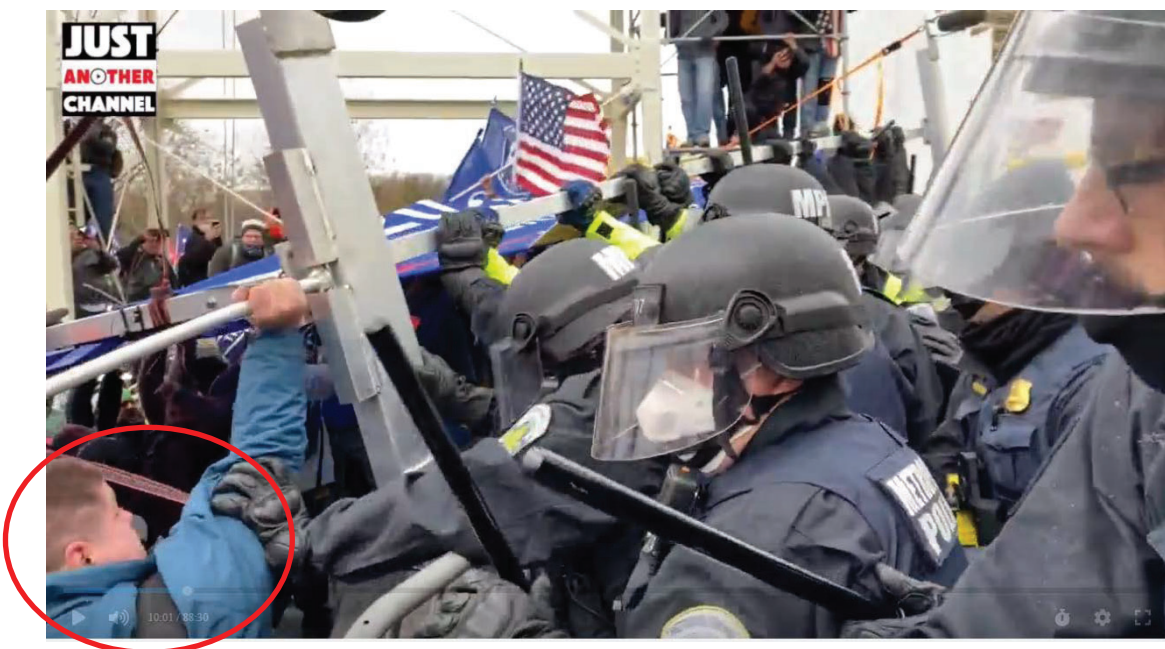




Just Another Channel: Shortly after being pushed back from the barricade, PADILLA is observed assisting rioters as they begin to move a large sign on wheels with a metal frame towards the barricade. The back of PADILLA's head and blue jacket are visible in the bottom right:



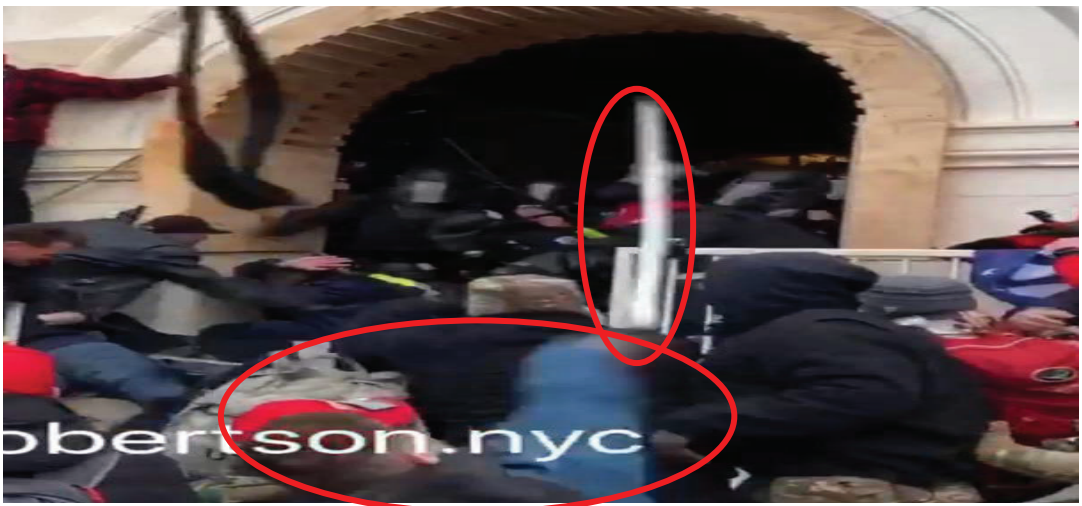
Just Another Channel: PADILLA is seen in the lower left of this shot as he and others grab the metal sign and begin using it as a battering ram against the MPD officers attempting to hold the line:



A few hours later on January 6, 2021, PADILLA and numerous other rioters began to mass in front of a law enforcement line inside the archway of the U.S. Capitol Lower West Terrace Doors. All six of the images below are shots from the jrobertson.nyc video. PADILLA is seen at the bottom of these pictures with a flagpole. He throws the flagpole at the officers who are simultaneously being attacked by rioters:









On January 7, 2021, PADILLA posted the following message on his Facebook page:

“There’s a lot of memes and posts flying around saying that the people who were fighting last night were all Antifa provocateurs etc. I just want to say that as a first hand observer of every point of last night, that it was not Antifa. They were Patriots who were trying to Restore the Republic after being attacked by the cops, who struck first. Even those who broke the windows next to the doorway to the Capitol were Patriots trying to find a way to turn the Flanks of the cops.”

On January 8, 2021, PADILLA posted the following on his Facebook page, which included a link to an approximately 21 second video of rioters at the U.S. Capitol posted to the website “streamable.”





On January 14, 2021, law enforcement attempted to interview PADILLA, who responded by stating, "I do not answer questions."

During the period January 7 to January 18, 2021, PADILLA employed a certain username in order to post numerous comments in chats on the web-site [thedonald.win](https://www.thedonald.win). Your affiant knows the username to belong to PADILLA for several reasons. The anonymous tipster indicated that PADILLA had an old Twitter account with the same username as the username on [thedonald.win](https://www.thedonald.win). Your affiant reviewed records from the username associated with the Twitter account and confirmed it belonged to PADILLA. Additionally, the username on [thedonald.win](https://www.thedonald.win) describes Dalton as "very close to where I live." Through a search of law enforcement databases, your affiant confirmed PADILLA's address as being in near proximity to Dalton, Georgia. Additionally, the same "streamable" video posted on PADILLA's Facebook page is also posted by the username on [thedonald.win](https://www.thedonald.win), with the comment "Pardon my haorse voice, I had already been beaten and sprayed multiple times." Additionally, the username on [thedonald.win](https://www.thedonald.win) posted additional biographical and location information which your affiant has confirmed is identical to PADILLA. Finally, on or about January 14, 2021, the username on [thedonald.win](https://www.thedonald.win) posted that FBI visited him that morning and "just told them I didn't answer questions." Below are several comments posted by the username on [thedonald.win](https://www.thedonald.win):

1. "After I had my right hand knuckles and ring finger crushed for just talking to an officer I knew was a soldier and reminding him of his duty to refuse unlawful orders, I got pissed, and so did many others. That's when we started pushing."
2. "I was right there. I have the wounds to prove it. I pushed the rails, I pushed the stairs, and then pushed the doorway. I was beaten unconscious twice, sprayed more times than I care to count, received strikes from batons that should have been lethal (Multiple temple and carotid strikes) except that God was on my side."
3. "They may have let the first group in for the fear mongering. The rest of us they smashed our hands, tased us, and sprayed us for the crime of standing at the railing yelling. Then we got pissed and started to push. Then they ran up the stairs and we followed, and I think God the guys on the left of the building were able to push up the stairs, allowing the capture the second tier and start knocking on the Capitol Building doors."
4. "Honestly, the guy breaking the windows weren't Antifa. They were Patriots trying to find a new way in so we could flank the cops who were holding the doorway."
5. "If we could have occupied the Capitol, we could have invoked the right given to us in the 2nd paragraph of the Declaration of Independence....We would have been in the Seat of Power. All we would need to do is declare our grievances with the government and dissolve the legislature, and replace it with Patriots who were there. Then simply re-adopt the Constitution with amendments added to secure future Federal elections."

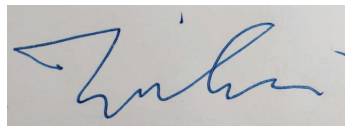
Based on the foregoing, your affiant submits there is probable cause to believe that JOSEPH LINO PADILLA, also known as JOSE PADILLA, violated 18 U.S.C. § 231(a)(3), which makes it unlawful to commit or attempt to commit any act to obstruct, impede, or interfere with

any fireman or law enforcement officer lawfully engaged in the lawful performance of his official duties incident to and during the commission of a civil disorder which in any way or degree obstructs, delays, or adversely affects commerce or the movement of any article or commodity in commerce or the conduct or performance of any federally protected function. For purposes of Section 231 of Title 18, a federally protected function means any function, operation, or action carried out, under the laws of the United States, by any department, agency, or instrumentality of the United States or by an officer or employee thereof. This includes the Joint Session of Congress where the Senate and House count Electoral College votes.

Your affiant submits there is probable cause to believe that JOSEPH LINO PADILLA, also known as JOSE PADILLA violated 18 U.S.C. § 111(a)(1), and (b) which makes it a crime to use a deadly or dangerous weapon, in this case a flagpole, to forcibly assault, resist, oppose, impede or interfere with any person engaged in the performance of official duties.

Your affiant submits that there is probable cause to believe that PADILLA violated 18 U.S.C. § 1752(a)(1), (2), and (4), and (b)(1)(A), which makes it a crime to (1) knowingly enter or remain in any restricted building or grounds without lawful authority to do; and (2) knowingly, and with intent to impede or disrupt the orderly conduct of Government business or official functions, engage in disorderly or disruptive conduct in, or within such proximity to, any restricted building or grounds when, or so that, such conduct, in fact, impedes or disrupts the orderly conduct of Government business or official functions; and (4) knowingly engage in any act of physical violence against any person or property in any restricted building or grounds. For purposes of Section 1752 of Title 18, a "restricted building" includes a posted, cordoned off, or otherwise restricted area of a building or grounds where the President or other person protected by the Secret Service, including the Vice President, is or will be temporarily visiting; or any building or grounds so restricted in conjunction with an event designated as a special event of national significance, while carrying or using a deadly or dangerous weapon or firearm, in this case a flagpole.

Your affiant submits there is also probable cause to believe that PADILLA violated 40 U.S.C. § 5104(e)(2)(D), and (F), which makes it a crime to willfully and knowingly utter loud, threatening, or abusive language, or engage in disorderly or disruptive conduct, at any place in the Grounds or in any of the Capitol Buildings with the intent to impede, disrupt, or disturb the orderly conduct of a session of Congress or either House of Congress, or the orderly conduct in that building of a hearing before, or any deliberations of, a committee of Congress or either House of Congress; and engage in an act of physical violence in the Grounds or any of the Capitol Buildings.

A handwritten signature in blue ink, appearing to read "Timothy J. Ervin", is written over a light gray rectangular background.

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Special Agent Timothy J. Ervin  
Federal Bureau of Investigation



Attested to by the applicant in accordance with the requirements of Fed. R. Crim. P. 4.1  
by telephone, this 22nd day of February 2021.



2021.02.22

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U.S. MAGISTRATE JUDGE